

PAUL GUSTIN

MARCH 3, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 285]

The Committee on the Judiciary, to whom was referred the bill (S. 285) for the relief of Paul Gustin, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the legal guardian of Paul Gustin, the minor child of T. Sgt. and Mrs. Roger W. Gustin, \$26,000 in full settlement of the claim of the said Paul Gustin against the United States for compensation for permanent personal injuries, pain and suffering, medical expenses, and future loss of earnings resulting from the child's touching live electrical contacts inside an unguarded high voltage transformer building located near family housing quarters on Rhine-Main Air Force Base, Frankfort, Germany, on September 14, 1955.

STATEMENT

On September 14, 1955, Paul Gustin, then a child of 5 years of age, was playing with other children in the vicinity of his parents' quarters in the dependent housing area on Rhine-Main Air Force Base in Germany. About 20 feet from the building in which the Gustin family lived there was located a high voltage transformer building. The transformer site was maintained by the United States Air Force through the Air Installations Section. As is disclosed in the report of the Air Force to the Senate committee, the Gustins and other residents of the area knew of the building, but did not know that it was a transformer site. There were no warning signs on the transformer building in English. One German sign was on the back of the building.

Paul Gustin entered the concrete transformer building through a small opening covered by a light gate and came in contact with the high-voltage current. Apparently the current entered the child's left hand and shorted out his left foot. As a result of this incident and the ensuing injuries, the child's left hand, portion of his forearm and a portion of his left foot were amputated. There were numerous other burns on his body that, at the time of the Air Force report, required further medical attention to determine the extent of damage.

While most of the medical and hospital expenses have been borne by the military due to the fact that the child's father is a serviceman, it is clear that the prosthetic devices needed for the child will have to be frequently replaced due to the child's growth, and then after the child's maturity will have to be replaced periodically for the balance of his lifetime. Further the child has been harmed by a loss of earning capacity during his lifetime. As is observed in the Senate report, the child's life expectancy is about 60 years.

This committee has reviewed the facts and agrees that this is a proper case for legislative relief in the amount fixed by the Senate. Accordingly this committee recommends that the bill be considered favorably.

The report of the Senate committee which contains the favorable report of the Department of the Air Force is as follows:

[S. Rept. No. 710, 85th Cong., 1st sess.]

PURPOSE

The purpose of the proposed legislation, as amended, is to authorize and direct the Secretary of the Treasury to pay to the legal guardian of Paul Gustin, the minor child of T. Sgt. and Mrs. Roger W. Gustin, the sum of \$26,000, in full settlement of all claims against the United States for compensation for permanent personal injuries, including the loss of the left hand, part of the left forearm, and 4 toes of the left foot, medical expenses, and future loss of earnings, sustained on September 14, 1955, after being burned by high-voltage electrical current located in the housing area of the Rhine-Main Air Force Base in Germany.

STATEMENT

On September 14, 1955, Paul Gustin, then aged 5 years, dependent son of T. Sgt. Roger W. Gustin, United States Air Force, while playing with other children in the vicinity of his parents' quarters in the dependent housing area on Rhine-Main Air Force Base, Germany, entered a transformer site. This was a small concrete building located within 20 feet of the building in which the Gustin family lived. It was maintained by the United States Air Force and, although it was common knowledge that children played in the area, none of the residents knew it was a transformer site and no warning signs were on the building in English. One German-language sign was located on the back of the building. The child entered through a small opening, and came in contact with the electrical current, which apparently entered the child's left hand and shorted out through the left foot. As a result of the incident, he suffered numerous burns on his body, but more importantly, developed gangrenous changes which necessitated the amputation of the left hand above the wrist and the lower one-

third of the forearm, and amputation of all but the little toe of the left foot at their base where they join the body of the foot.

Most of the child's medical care and hospital expense have thus far been borne by the military. According to the medical reports, however, frequent replacement of prosthetic and orthopedic devices will be necessary, in addition to normal wear and replacement after full growth is reached. According to the Standard Ordinary Mortality Tables, he would have a life expectancy of about 60 years. The current United States census mortality tables give the life expectancy of a 5-year-old white male child as from 63 to 77 years.

The Veterans' Administration has reported to the committee staff informally that a veteran who had suffered the same injuries would be rated as 200 percent permanently and totally disabled.

No legal remedy is provided for this child under the Federal Tort Claims Act, since the accident occurred in a foreign country, nor would the Military Personnel Claims Act apply, since this act (at the time the injury occurred) limited recovery on account of personal injuries to reasonable medical and hospital expenses actually incurred.

As long as the child's father remains in the Air Force, from which he will be eligible for retirement in about 4 years, the child will be eligible for treatment in military hospitals, under the Dependents' Medical Care Act, Public Law 569, 84th Congress, approved June 7, 1956. However, section 103 (g) (2) of that act provides that hospitalization under this section is not authorized dependents for—

* * * elective medical and surgical treatments, except that the Secretary of Defense, after consultation with the Secretary of Health, Education, and Welfare, by regulation, may provide in special and unusual cases for hospitalization of not to exceed 12 months for dependents for such disorders of such diseases or for such treatments.

Section (h) (1) of that section provides that dependents shall not be provided under this section—"prosthetic devices, hearing aids, orthopedic footwear and spectacles" except outside of the continental limits of the United States, or at remote stations within the continental limits where adequate civilian facilities are not available.

The committee notes further that a dependent, as defined in this act, means any person who bears to a retired member of a uniformed service the relationship of an unmarried legitimate child (including an adopted child or stepchild), if such child has not passed his 21st birthday.

This then means to the committee that under no circumstances, as the law presently exists, may the military furnish to this child the prosthetic devices or orthopedic footwear he will surely require, even though he may be eligible for cosmetic or plastic medical care (assuming his father retires from the service) until he reaches the age of 21.

The question of damages has been carefully considered by the committee, having in mind the life expectancy, the degree of disability and the medical and hospital benefits to which the child may be entitled over a period of years, as well as the fact that heretofore \$35,000 has been the largest amount awarded by a private claim bill for personal injuries, by virtue of Private Law 349 of the 81st Congress, as compensation to Mary Thomas Schiek, a Red Cross employee who

suffered severe permanent injuries while serving in India, when injured in an accident involving an Army truck, coupled with a fairly well substantiated charge of gross negligence and malpractice in an Army field hospital. After taking into consideration these factors, the committee has determined that the amount recommended in this bill is fair and reasonable.

The committee invites particular attention to the fact that the bill has been amended to provide that the payment be made to the legal guardian of the child, to insure, insofar as it can, that the award will inure to the sole benefit of the child.

The committee has been informed by the sponsor of the bill that an attorney has rendered substantial services in connection with this bill and has, therefore, for that reason, as well as the prospect of a guardianship proceeding, allowed the payment of an attorney fee (see *infra*).

Attached hereto for the information of the Senate are 2 letters from the Department of the Air Force, dated March 5 and April 2, 1957, respectively, setting forth in detail the facts in connection with this claim and also calling attention to the fact that the committee files contain 5 recent photographs of the child showing the extent and nature of his injuries.

DEPARTMENT OF THE AIR FORCE,
Washington, March 5, 1957.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for a report from the Department of the Air Force on S. 285, 85th Congress, a bill for the relief of Paul Gustin.

The purpose of this legislative proposal is to pay to Paul Gustin, minor child of T. Sgt. and Mrs. Roger W. Gustin, the sum of \$50,000 as compensation for permanent personal injury suffered at Rhine-Main Air Force Base, Frankfurt, Germany.

The incident giving rise to the injuries complained of occurred in an overseas area and as such was cognizable under only one statute, the act of July 3, 1943 (57 Stat. 272; 31 U. S. C. 223b). Only actual expenses incurred could be paid. There is no forum or other vehicle other than a private relief bill by which adequate relief in the circumstances could be afforded.

The facts giving rise to the private relief bill are as follows: On September 14, 1955, Paul Gustin, age 5 years, dependent son of T. Sgt. Roger W. Gustin, United States Air Force, while playing with other children in the vicinity of his parents' quarters in the dependent housing area on Rhine-Main Air Force Base, Germany, entered a transformer site. The transformer building was a small concrete block-house which was located within 20 feet of the building in which the Gustin family lived. The transformer site was maintained by the United States Air Force through the Air Installations Section. Although it was common knowledge that children played in the area where the transformer site was located, the Gustins and other residents in that area did not know this was a transformer site and no warning signs were on the building, in English. One German sign was located

on the back of the building. The child entered through a small opening covered by a light grate and came in contact with the high-voltage electrical current. The burn he sustained apparently entered the child's left hand and shorted out through the left foot. As a result of this incident and the ensuing injuries, the child's left hand, portion of his forearm and a portion of his left foot were amputated. There were numerous other burns on his body that will require further medical attention to determine the extent of damage.

Most of the medical and hospital expenses have thus far been borne by the military, and are thus not compensable. There will be, however, in the future, frequent replacement of prosthetic devices during growth, approximately 14 to 16 years; normal wear and replacement thereafter during estimated life span, and estimated additional 40 to 45 years; necessary medical expenses during the entire period; cost of special footwear and other clothing during lifetime; loss of child's services during dependency; diminished lifelong earning capacity; pain and suffering.

Normally, remedy for such injuries would be the subject of action under the Federal Tort Claims Act (28 U. S. C. 2671-80) where relief is granted for pain and suffering, anticipated medical expenses, and loss of earnings; however, the Federal Tort Claims Act does not apply to any claim arising in a foreign country. Therefore, the only remedy available to Paul Gustin is under the provisions of the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), for claims arising out of the activities of the Air Force. This act as in force at the time the cause of action arose limited recovery on account of personal injuries to reasonable medical and hospital expenses actually incurred, thus precluding payment for expected future medical expenses arising out of the incident, pain and suffering, loss of earning capacity. It is apparent that the sums required to bring about the treatment diagnosed are presently unascertainable and they, as well as the other elements of damage mentioned, are not "incurred" medical expenses. Thus, recovery under the limitations of the only remedy available to the claimant would seem to be grossly inadequate. The proposed diagnosed treatment will require the expenditure of considerable sums of money in the event that such treatment is not or cannot be afforded through Government facilities. In the event that the legal guardian of Paul Gustin is separated from the service prior to the completion of such extended treatment, as could quite possibly be the case, the expense involved for continued treatment could be considerable, and the loss of services and diminished lifetime earnings will always be a factor to be contended with.

It may be noted that the provisions of the act of July 3, 1943, were restated by Public Law 1028, 84th Congress, as section 2733 of title 10, United States Code, and further that, by virtue of the amendment made by Public Law 446, 84th Congress, recovery is not now limited to "expenses actually incurred." However, these conditions do not affect the validity of the conclusions advanced above as to the operation of the statutory provisions in force at the time of the accident.

The Department of the Air Force recommends that favorable consideration be given to S. 285, and that an appropriate award be left to the determination of the Congress.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DAVID S. SMITH,
Assistant Secretary of the Air Force.

DEPARTMENT OF THE AIR FORCE,
Washington, April 2, 1957.

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to S. 285, 85th Congress, a bill for the relief of Paul Gustin. In accord with a request made by Mr. J. Carlisle Ruddy, a professional staff member of your committee, there follows an expanded statement of the injuries sustained by Paul Gustin.

"Paul H. Gustin, the son (then 5 years of age) of T. Sgt. Roger W. Gustin, AF16009774, presently stationed with the 1401st Air Base Group, Andrews Air Force Base, Md., suffered severe third degree electrical burns to the left hand, left foot, right thigh, and anterior chest wall, when he touched some high-voltage electrical equipment in the powerhouse at Gateway Gardens, Rhine-Main, Germany, at approximately 0900, September 14, 1955. Gangrenous changes, secondary to coagulation necrosis, developed in the left hand and the anterior portion of the left foot requiring amputation of the left hand above the wrist in the lower one-third of the forearm, and amputation of the left foot toes 1, 2, 3, and 4 (all but the little toe) at their base where they join the body of the foot. The surgical amputations were performed October 4, 1955, at the 7100th USAF Hospital, Weisbaden, Germany."

It should be noted that, as brought out in the report of the Department of the Air Force, dated March 5, 1957, the medical records indicate that the left hand, and not the right, was amputated, and further investigation confirms the correctness of the medical record in this respect.

Sincerely yours,

JOE W. KELLY,
*Major General, USAF,
Director, Legislative Liaison.*

WASHINGTON, D. C., May 1, 1957.

Hon. GEORGE A. SMATHERS,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR SMATHERS: Pursuant to a conversation I had recently with Mr. John O'Keefe of your office with reference to Senate bill 285, introduced on behalf of Master Paul Gustin, I would like to submit herewith the following information:

During the month of October 1956, Sgt. Roger W. Gustin, Paul's father, conferred at length with this office concerning any possible claim which might exist on behalf of his son. Thereafter, Sergeant Gustin presented the file which he had on the case, which we reviewed

and discussed with him. Subsequently, this office studied all applicable statutes and decisions to determine the possibility of presenting a claim under the Federal Tort Liability Act or by proceeding in the United States Court of Claims. In doing this, we were mindful of the fact that, according to advice which Sergeant Gustin had apparently obtained, such action was possible.

After doing considerable research, we were satisfied that no such action was possible, and so advised Sergeant Gustin.

In January of this year, Sergeant Gustin discussed with us Senate bill 285. Thereafter, numerous conferences, telephonic and personal, were held with Sergeant Gustin and Mrs. Gustin, in addition to telephone conferences with Mr. O'Keefe of your office, and others.

On March 28, an extended conference was had with Mr. Ruddy of the Senate Judiciary Committee staff. Thereafter, we arranged for the taking of photographs of the injured child, which were forwarded, together with a memorandum, to Senator Eastland of the Judiciary Committee, a copy of which memorandum was sent to your office, together with a covering letter suggesting the possibility of amending the bill to provide for continued medical attention for Paul.

In connection with the services which have been rendered by this office on behalf of the injured child, and considering all of the circumstances, it is my opinion that a reasonable fee for these services is \$1,000.

It would be appreciated if the Senate bill for the relief of Paul provide such fixed amount, rather than to leave this to future action.

Respectfully yours,

BERNARD MARGOLIUS.

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